

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

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| In the Matter of: |) | |
| |) | |
| Opinion requested by: |) | No. 75-084 |
| Robert A. Rundstrom, |) | December 3, 1975 |
| Deputy County Counsel, |) | |
| Yolo County |) | |

BY THE COMMISSION: We have been asked the following question by Robert A. Rundstrom, Deputy County Counsel of Yolo County:

Do filing officers have discretionary authority in assessing late penalties?

CONCLUSION

Filing officers have discretionary authority in assessing late penalties against persons who fail to file original statements or reports by the filing deadline so long as their discretion is exercised on an impartial basis. However, once the filing officer provides written notice to the tardy filer, he must, beginning five days after the mailing of the notice, assess a fine of \$10 a day from the filing deadline to the date the statement is filed. With respect to copies of statements or reports, the clerk may assess late penalties beginning five days after he has provided written notice to the late filer.

ANALYSIS

Government Code Section 91013(a), which recently was amended retroactive to January 7, 1975^{1/} authorizes filing

^{1/} All statutory references are to the Government Code unless otherwise noted. Assembly Bill 1259, Chapter 915, 1975 Session, approved by the Governor September 19, 1975.

officers to exercise discretion when assessing penalties for original statements or reports filed after the deadline specified in the Political Reform Act. A filing officer is permitted to waive a penalty whenever he believes that the purposes of the Act will not be furthered by the imposition of the penalty and the failure to file was not willful.^{2/}

The requirement of impartiality in the determination of late penalties means that the filing officer may not base his decision on his personal relationship with the filer, the political party of the filer, or similar personal biases. However, the filing officer may consider illness, injury, personal tragedy or similar legitimate reasons for a late filing. Moreover, nothing prohibits the filing officer from

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Section 91013. (a) If any person files an original statement or report, after any deadline imposed by this act he shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis he determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within five days after the filing officer has sent specific written notice of the filing requirement.

(b) If any person files a copy of a statement or report after any deadline imposed by this act, he shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars (\$10) per day, starting five days after the officer has sent specific notice of the filing requirement and until the statement is filed.

(c) The officer shall deposit any funds received under this section into the general fund of the jurisdiction of which he is an officer. No liability under this section shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater.


establishing guidelines for waiving late penalties or from requiring a written explanation for a late filing.

Section 91013(a) imposes one additional limit on the filing officer's exercise of discretion. If a filing officer provides written notice to a tardy filer and the statement is not filed five days after the notice is sent, the filing officer must assess a penalty of \$10 per day from the deadline for filing to the date the statement is filed. Thus, the filing officer may exercise discretion only during the period between the filing deadline and five days after the notice has been sent.

In contrast, with respect to copies of statements or reports, the filing officer has no discretion in assessing late penalties. Section 91013(b) provides that late penalties may be assessed only after the filing officer has mailed written notice to the tardy filer and has waited an additional five days. At the conclusion of this five-day grace period the filing officer must assess the fine of \$10 per day prospectively until the copy of the statement or report is filed.

It should be emphasized that "notice" is provided pursuant to Sections 91013(a) and (b) only when it is mailed after the filing deadline. The purpose of "notice" in Section 91013 is to inform persons that they are subject to penalty because they have failed to file timely reports pursuant to the Political Reform Act. If the notice could be sent by the filing officer and received by the filer five days prior to the original deadline, all fines would be mandatory as of the original deadline, thereby making pointless the grant of discretion to the filing officer in subsection (a). With respect to those persons filing copies of reports pursuant to subsection (b), Section 91013 creates at least a five-day grace period prior to the imposition of any late penalty.

Approved by the Commission on December 3, 1975.
Concurring: Brosnahan, Carpenter, Lowenstein and Miller.
Commissioner Waters was absent.



Daniel H. Lowenstein
Chairman